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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 JOEL WHITE,

11 Plaintiff,

12 v.

13 RON HAYNES, WASHINGTON  
14 STATE DEPARTMENT OF  
CORRECTIONS,

15 Defendants.

CASE NO. 3:19-CV-05302-BHS-DWC

ORDER TO SHOW CAUSE OR  
AMEND

16 Plaintiff Joel White, proceeding *pro se*, filed this civil rights complaint pursuant to 42  
17 U.S.C. § 1983.<sup>1</sup> Having reviewed and screened Plaintiff's Complaint under 28 U.S.C. § 1915A,  
18 the Court finds Plaintiff has failed to state a claim, but provides Plaintiff leave to file an amended  
19 pleading by June 6, 2019, to cure the deficiencies identified herein.  
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23 <sup>1</sup> Plaintiff also filed a Motion for Leave to Proceed *In Forma Pauperis*. Dkt. 1, 4. However, the Court finds  
24 it improbable Plaintiff will be able to cure the deficiencies of his Complaint and therefore will not rule on the  
request to proceed *in forma pauperis* until Plaintiff has filed an amended complaint.

1       **I.       Background**

2           Plaintiff, who is incarcerated at Stafford Creek Corrections Center, alleges he has been  
3 illegally incarcerated since being coerced into pleading guilty on July 12, 2013. Dkt. 1-1.  
4 Plaintiff requests monetary damages. *Id.*

5       **II.       Discussion**

6           Under the Prison Litigation Reform Act of 1995, the Court is required to screen  
7 complaints brought by prisoners seeking relief against a governmental entity or officer or  
8 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the  
9 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to  
10 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant  
11 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,  
12 152 F.3d 1193 (9th Cir. 1998).

13          Plaintiff’s Complaint suffers from deficiencies requiring dismissal if not corrected in an  
14 amended complaint.

15       A. Statute of Limitations

16          In his Complaint, Plaintiff alleges he was coerced into pleading guilty in 2013. Dkt. 1-1.  
17 He also alleges his right to be free from double jeopardy was violated in 1985 and 2013. *Id.*

18          A complaint must be timely filed. The Civil Rights Act, 42 U.S.C. § 1983, contains no  
19 statute of limitations. “Thus, the federal courts [] apply the applicable period of limitations under  
20 state law for the jurisdiction in which the claim arose.” *Rose v. Rinaldi*, 654 F.2d 546, 547 (9th  
21 Cir. 1981). In *Rose*, the Ninth Circuit determined the three year limitations period identified in  
22 Revised Code of Washington 4.16.080(2) is the applicable statute of limitations for § 1983 cases  
23 in Washington. 654 F.2d at 547; *see R.C.W.* § 4.16.080(2).  
24

1 The Court also applies the forum state’s law regarding equitable tolling for actions  
2 arising under § 1983. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). In Washington, courts  
3 permit equitable tolling “when justice requires.” *Millay v. Cam*, 135 Wash.2d 193, 206 (1998).  
4 “The predicates for equitable tolling are bad faith, deception, or false assurances by the  
5 defendant and the exercise of diligence by the plaintiff.” *Id.* Courts “typically permit equitable  
6 tolling to occur only sparingly, and should not extend it to a garden variety claim of excusable  
7 neglect.” *State v. Robinson*, 104 Wash.App. 657, 667 (2001) (internal quotations omitted).  
8 Washington State also allows for a tolling period when a person is imprisoned on a criminal  
9 charge prior to sentencing. *See* R.C.W. § 4.16.190; *see also Williams v. Holevinski*, 2006 WL  
10 216705, \*2 (E.D. Wash. July 31, 2006).

11 Although the statute of limitations is an affirmative defense which normally may not be  
12 raised by the Court *sua sponte*, it may be grounds for *sua sponte* dismissal of an *in forma*  
13 *pauperis* complaint where the defense is complete and obvious from the face of the pleadings or  
14 the Court’s own records. *See Franklin v. Murphy*, 745 F.2d 1221, 1228–30 (9th Cir. 1984).

15 From the allegations contained in the Complaint, Plaintiff had actual notice of the facts  
16 related to the claims alleged in the Complaint in 1985 and on July 12, 2013. *See* Dkt. 1-1; *Kimes*  
17 *v. Stone*, 84 F.3d 1121, 1128 (9th Cir. 1996) (a claim accrues when the plaintiff knows or has  
18 reason to know of the injury which is the basis of the action). Taking the latest date possible, the  
19 time for filing a lawsuit expired on July 12, 2016, three years after Plaintiff was allegedly  
20 coerced into pleading guilty. *See* Dkt. 1-1. Plaintiff initiated this lawsuit on April 16, 2019,  
21 approximately three years after the last possible date the statute of limitations expired. *See* Dkt.  
22 1. Plaintiff has not shown statutory or equitable tolling is applicable in this case. *See* Dkt. 1-1.

1 Therefore, Plaintiff must show cause why the Complaint should not be dismissed because it is  
2 untimely.

3 B. Heck Bar

4 The allegations in the Complaint focus on Plaintiff's allegedly unlawful incarceration,  
5 including his convictions and sentences. *See* Dkt. 1-1. The Court finds Plaintiff's convictions  
6 would be invalidated if he were to prove the allegations in the Complaint. Thus, the Court finds  
7 Plaintiff's claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

8 A plaintiff may only recover damages under § 1983 for allegedly unconstitutional  
9 imprisonment, or for any other harm caused by actions whose unlawfulness would render the  
10 imprisonment invalid, if he can prove the conviction or other basis for confinement has been  
11 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal  
12 authorized to make such a determination, or called into question by a federal court's issuance of a  
13 writ of habeas corpus. *Heck*, 512 U.S. at 486-87. A "§ 1983 action is barred (absent prior  
14 invalidation) –no matter the relief sought (damages or equitable relief), no matter the target of his  
15 suit (state conduct leading to the conviction or internal prison proceedings) –*if* success in that  
16 action would necessarily demonstrate the invalidity of confinement or its duration." *Wilkinson v.*  
17 *Dotson*, 544 U.S. 74, 81-82 (2005) (emphasis in original).

18 Plaintiff alleges he was coerced into pleading guilty and his right to be free from double  
19 jeopardy was violated. Dkt. 1-1. If Plaintiff proves all the allegations in the Complaint, it would be  
20 grounds for invalidation of his underlying convictions. For example, if Plaintiff proves his plea was  
21 not voluntary this could invalidate his 2013 convictions. Plaintiff's convictions could also be  
22 invalidated if he proved his right to be free from double jeopardy was violated when he was  
23 convicted in 1985 and 2013.

1 As Plaintiff's allegations amount to an attack on the constitutional validity of his  
2 underlying convictions, the Complaint may not be maintained under § 1983 unless Plaintiff can  
3 show the convictions have been invalidated. *See Heck*, 512 U.S. at 486-87; *Ramirez v. Galaza*, 334  
4 F.3d 850, 855-56 (9th Cir. 2003). Plaintiff does not allege his convictions have been reversed on  
5 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make  
6 such determination, or called into question by a federal court's issuance of a writ of habeas corpus.  
7 As Plaintiff's current convictions have not been reversed and as the validity of the convictions  
8 would be called into question if Plaintiff were to prove the facts of this case, his claims are barred  
9 by *Heck*. Therefore, Plaintiff must show cause why this case should not be dismissed as *Heck*  
10 barred.

11 C. Personal Participation

12 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he  
13 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)  
14 the violation was proximately caused by a person acting under color of state law. *See Crumpton*  
15 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to  
16 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271  
17 (1994).

18 To satisfy the second prong, a plaintiff must allege facts showing how individually  
19 named defendants caused, or personally participated in causing, the harm alleged in the  
20 complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. IBM*, 637 F.2d 1350,  
21 1355 (9th Cir. 1981). A person subjects another to a deprivation of a constitutional right when  
22 committing an affirmative act, participating in another's affirmative act, or omitting to perform an  
23 act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Sweeping  
24

1 conclusory allegations against an official are insufficient to state a claim for relief. *Leer*, 844 F.2d  
2 at 633. Further, a § 1983 suit cannot be based on vicarious liability alone, but must allege the  
3 defendant's own conduct violated the plaintiff's civil rights. *City of Canton v. Harris*, 489 U.S.  
4 378, 385-90 (1989).

5 Here, Plaintiff names Ron Haynes and the Washington State Department of Corrections  
6 ("DOC") as Defendants. Dkt. 1-1. Plaintiff, however, fails to allege any wrong-doing by  
7 Defendants. Plaintiff has failed to adequately explain what actions or inactions by Defendants  
8 resulted in an alleged constitutional violation. Therefore, Plaintiff's allegations are insufficient to  
9 show Defendants violated his constitutional rights. *See Jones v. Community Development*  
10 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (vague and mere conclusory allegations unsupported  
11 by facts are not sufficient to state section 1983 claims).

#### 12 D. Improper Defendant

13 The Court also notes the DOC is not a proper Defendant in this action. Section 1983  
14 applies to the actions of "persons" acting under the color of state law. The DOC, as an arm of the  
15 state of Washington, is not a "person" for purposes of a § 1983 civil rights action. *See Will v.*  
16 *Michigan Dep't. of State Police*, 491 U.S. 58, 65, 71 (1989). Additionally, there is no evidence  
17 the state of Washington has waived its Eleventh Amendment immunity in federal courts.  
18 Therefore, the DOC is a state agency which cannot be sued under § 1983.

### 19 **III. Instructions to Plaintiff and the Clerk**

20 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an  
21 amended complaint and within the amended complaint, he must write a short, plain statement  
22 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the  
23 person who violated the right; (3) exactly what the individual did or failed to do; (4) how the  
24 action or inaction of the individual is connected to the violation of Plaintiff's constitutional

1 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*  
2 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). Each claim for relief must be simple,  
3 concise, and direct. Plaintiff must also show equitable or statutory tolling applies in this case and  
4 show this case is not *Heck* barred.

5 Plaintiff shall present the amended complaint on the form provided by the Court. The  
6 amended complaint must be legibly rewritten or retyped in its entirety, it should contain the same  
7 case number, and it may not incorporate any part of the original complaint by reference. The  
8 amended complaint will act as a complete substitute for the original Complaint, and not as a  
9 supplement. The Court will screen the amended complaint to determine whether it contains  
10 factual allegations linking each defendant to the alleged violations of Plaintiff's rights.

11 If Plaintiff fails to file an amended complaint or fails to adequately address the issues  
12 raised herein on or before June 6, 2019, the undersigned will recommend dismissal of this action  
13 pursuant to 28 U.S.C. § 1915.

14 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983  
15 civil rights complaint and for service.

16 Dated this 7th day of May, 2019.

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19 David W. Christel  
20 United States Magistrate Judge  
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